



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of J.C-R., Office of
Information Technology

CSC Docket No. 2019-418

Discrimination Appeal

ISSUED: JANUARY 22, 2019 (SLK)

J.C-R., a Technical Support Specialist 1 with the Office of Information Technology (OIT), appeals the decision of the Special Assistant to the State Chief Technology Officer (Special Assistant), which did not substantiate her allegations to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.C-R., who is a Latino female, filed a complaint with the OIT's Equal Employment Office (EEO) alleging that J.H., a Caucasian male Technical Support Specialist 1, and S.R., an African-American male Supervisor, Information Technology Help Desk, discriminated against her based on race, national origin and gender. Specifically, she provided numerous examples where she felt she was excluded, her recommendations were not considered, and she was treated differently than coworkers. She also presented examples of certain comments or behavior that she felt were inappropriate. As part of the investigation, the EEO interviewed J.C-R., reviewed documentation that J.C-R. submitted including a description of each alleged incident, supporting e-mails and a picture, and interviewed B.R., Deputy Chief Technology Officer - OIT and S.R.¹ Based on the investigation, the EEO was unable to substantiate the allegations. It is noted

¹ The EEO's determination indicates that it completed interviews, but it does not indicate, besides J.C-R., who was interviewed. In response to the appeal, the appointing authority indicates that B.R. and S.R. were interviewed as part of the investigation. It is unclear if the EEO investigation included other interviews.

that J.C-R. did not appeal the EEO's initial determination. Thereafter, J.C-R. alleged to the EEO that S.R., J.H. and another employee were retaliating against her due to her initial complaint. Specifically, she alleged that S.R. retaliated against her for filing the initial complaint by ignoring her recommendations, excluding her, and treating her differently in other ways. In response, the Special Assistant issued a determination finding that J.C-R. had not been subject to a State Policy violation nor had S.R. retaliated against her.²

On appeal, J.C-R. presents that B.R. decided that it was in her best interest to relocate her position due to her complaints against S.R. She emphasizes her belief that S.R. retaliated against her after she filed a State Policy complaint against him and two other employees. Additionally, she indicates that she filed a second complaint with the EEO. She submits the documentation that she provided to the EEO and other documentation which describes the various incidents which made her feel like she had been discriminated against.

In response, the appointing authority argues that J.C-R.'s appeal is untimely as her appeal is dated 30 days after the Special Assistant's initial determination letter. Additionally, it asserts that J.C-R. has not presented any evidence to prove her allegations that she was treated differently based on her race, gender and/or retaliated against for filing a prior discrimination complaint. The appointing authority highlights that supervisors are free to accept or reject recommendations given by their direct reports and S.R.'s rejection of her ideas does not establish a claim of discrimination. It notes that the reassignment of an employee is governed by a collective negotiations agreement and her reassignment is currently under review. The appointing authority submits an e-mail from S.R. to B.R., where S.R. contends that J.C-R. has technical deficiencies and a pattern for not completing assignments, which has hindered the team's ability to provide effective customer service. Further, the e-mail describes an example where J.C-R. was unable to complete an assignment in a timely fashion. Moreover, excerpts from the investigator's interview with S.R. indicates that individuals expressed dissatisfaction with J.C-R.'s ability to train. During the interview, S.R. also denied that he played any role in the decision to relocate J.C-R. Additionally, the appointing authority indicates that J.C-R. may have breached confidentiality by discussing her complaint with the newly appointed Chief Operating Officer and Chief Data and Privacy Officer. Further, the appointing authority submits an e-mail from B.R. to J.C-R. which states that she used her administrative rights to access an employee's account without permission which constituted conduct unbecoming a public employee.

² The Special Assistant's determination does not mention that J.C-R. alleged that J.H. and another individual also retaliated against her.

Although given the opportunity, J.C-R. has not responded to the appointing authority's response.³

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race or national origin. *N.J.A.C.* 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment is prohibited by this policy. *N.J.A.C.* 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. *N.J.A.C.* 4A:7-3.2(j) provides, in pertinent part, that all persons interviewed shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, it is noted that the Civil Service Commission (Commission) need not decide as to whether J.C-R.'s appeal was timely as it will address this matter based on the merits. While the Commission notes that J.C-R.'s appeal is dated 30 days after the Special Assistant's determination, there is no evidence in the record as to when she received this determination and it is plausible that her appeal was timely based on when she received it.

The Commission has conducted a review of the record in this matter and finds that J.C-R.'s allegations that S.R., J.H. and another employee subjected her to gender and racial discrimination and that they retaliated against her for filing her prior discrimination complaint cannot be substantiated. With respect to J.C-R.'s numerous examples where she felt that she was discriminated against because her recommendations were not followed, she felt excluded and other examples of treatment where she felt she was treated differently or unfairly, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Further, it is noted that the investigation revealed that her superiors indicated that there were certain deficiencies in her work. Regardless, although J.C-R. may have felt that she was treated in certain

³ The appointing authority indicated that it mailed its response to J.C-R. on October 25, 2018. Although J.C-R. indicated that she would respond, nearly three months has passed since the appointing authority sent it to her and she has not responded, nor has she contacted the Division of Appeals and Regulatory Affairs indicating that she did not receive the response or that she needed additional time to respond.

ways because of her gender or race, she has not provided any witnesses or other evidence that can confirm that the reason for her treatment was based on her membership in a protected class. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Similarly, she has not provided any evidence that S.R., J.H. or any other employee treated her in certain ways due to her prior filing of a discrimination complaint. Moreover, she has not presented any witnesses that were not interviewed or any other evidence that was not reviewed that could potentially corroborate her claims. Therefore, the Commission finds that the EEO's investigation was prompt, thorough and impartial and J.C-R. has not met her burden of proof.

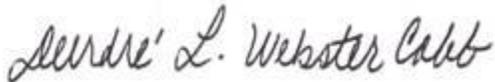
One other issue needs to be addressed. The appointing authority indicates that J.C-R. may have breached confidentiality by discussing this matter with the Chief Operating Officer and Chief Data and Privacy Officer. The Commission warns J.C-R. not to discuss this matter with anyone other than the EEO or she may be subjected to administrative or disciplinary action under *N.J.A.C. 4A:7-3.2(j)*.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF JANUARY, 2019



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